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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

**Writ Petition No.2328 of 2003**

PETITIONER: Dharmendra Singh Ratrey,
aged about 18 years,
S/o Resham Lal, R/o Khaija
(Bhatapara) P.O. Pahariya, Tehsil
and District- Janjgir Champa (C.G.).

Versus

RESPONDENTS:

1. State of Chhattisgarh,
Through Secretary,
Ministry of Education,
Raipur (C.G.)

2. Directorate Technical Education,
Through its Director,
Raipur (C.G.)

3. Flyking Courier,
Near State Bank of India,
Akaltara, Distt. Janjgir Champa (C.G.)

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POST FOR ORDER ON 10th August, 2003

Sd/-
L.C. Bhadoo
Judge
10th August, 2003

(39)

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Present:-

Shri Parag Kotecha, Advocate: For the petitioner

Shri Sanjay K. Agrawal, Dy. Advocate General: For the respondents No. 1 & 2.

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**Before: Hon'ble Shri L.C. Bhadoo, J.**

**ORDER**

(Passed on 8th August, 2003)

1. By this writ petition under Articles 226/227 of the Constitution of India, the petitioner has questioned the decision of the respondent No.2 for not calling him for counseling for admission to the Bachelor of Engineering Course. The petitioner's petition is that he has cleared the 12th examination with 68.67 marks. He belongs to the Scheduled Caste category. His mark sheet is Annexure P/1. The petitioner intends to seek admission in the Bachelor of

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Engineering course and that is why he applied for admission by a properly filled in form and the same was sent to the Respondent No.2 through Flyking Courier, Akaltara i.e. Respondent No.3, for that the Respondent No.3 charged extra amount to sent his form on a faster speed. The petitioner duly handed over the form to the Respondent No.3 on 23.6.2003 for delivering the same to the Respondent No.2 and in token thereof the Respondent No.3 issued a receipt Annexure P/3. The admission notice is Annexure P/4. When the petitioner checked his name on the internet about the date of counseling, as his name was not included in the list, therefore, he made an enquiry from the Respondent No.2 as to why his name had not been included in the list, the reply was given to him that the petitioner's form was not received in the office. Thereafter the petitioner made an enquiry from the Respondent No.3 and on 28.7.2003 form of the petitioner returned with the endorsement 'refused to accept'. A copy of the envelope is annexed herewith as Annexure P/5. But, number of candidates whose percentage was less than the petitioner had been invited for counseling. As the respondent No.2 refused to accept the petitioner's form, the petitioner's name was not included in the counseling list. The counseling has started for the first semester from 1st August 2003 and it will continue till 10th August 2003. The newspaper cutting in this context is filed as Annexure P/6.

2. In para 5.7 of the petition the petitioner categorically mentioned that he has got the reasonable apprehension that the form was not sent by the Respondent No.3 to the Respondent No.2 because in annexure P/5 no one has put his signature. The last date for submitting the form was 7.7.2003 and the petitioner had sent the form through Respondent No.3 on 23rd June, 2003 if

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the Respondent No.2 had refused to accept the form of the petitioner then the Respondent No.3 ought to have returned the envelope to the petitioner within the stipulated time. On account of the attitude of the Respondent No. 2 and 3 the petitioner's whole year is going to be wasted. It is, therefore, requested that the Respondent No.2 may be directed to allow the petitioner to participate in the counseling for the first semester of B.E. for the year 2003.

3. Notice of the petition was issued. As far as the Respondent No.3 is concerned, an affidavit has been filed by the petitioner that the Respondent No.3 has refused to accept the notice. Return has been filed on behalf of the respondents' No. 1 and 2 in which it has been mentioned that a bare perusal of the Annexure P/5 envelope reveals that on the said envelope it has been endorsed 'refused to accept'. It nowhere bears the seal and signature of the person who has made the endorsement and the petitioner is not aware of the fact whether the Respondent No.3 actually sent his form to the Respondent No.2 or not, and has expressed his apprehension in para 5.7 about not sending of the form by the Respondent No.3 to the Respondent No.2.

4. The answering Respondent No.2 had not refused to accept the application form of the petitioner. All forms which were sent by the courier service were accepted and processed by the Respondent No.2 and there was no question of refusal on the part of Respondent No.2. The petitioner himself is responsible and liable for the aforesaid lapse, and not answering respondent No.2. It is nowhere mentioned on the envelope that the Respondent No.3 after accepting the envelope from the petitioner ever sent it from Akaltara to Raipur and the same envelope was tendered to the Directorate Respondent No.2. Thus it

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reveals that the envelope was not sent to the Respondent No.2. It also does not bear the seal or signature while writing 'refused to accept'. The Respondent No.3 could have sent the envelope to the petitioner after well within time. The last date was 7.7.2003 but it appears that before 7.7.2003 the respondent No.3 did not return even the envelope to the petitioner. Since the form was not received by the Respondent No.2 therefore there is no question of illegal action on the part of the Respondent No.2. The allegation made in para 5.4 of the petition is denied. The allegation of para 5.8 of the petition is also denied. The petitioner is not entitled for any relief as the counseling in the Govt. College has already been completed.

5. I have heard Shri Parag Kotecha, learned counsel for the petitioner and Shri Sanjay K. Agarwal, learned Deputy Advocate General for the Respondents No. 1 and 2.

6. However, Respondent No.3 preferred not to make his representation in this petition and refused to accept the notice of the petition. An affidavit to this effect has been filed by the petitioner.

7. Having heard learned counsel for the parties, and having perused the petition and the return filed by the Respondents No. 1 and 2 it is clear that even the petitioner is not sure as to whether the form of the petitioner was ever tendered at the receipt counter of the Respondent No.2 or not. It has specifically been mentioned in the return that there was a separate counter for receipt of the application forms which were sent through courier and the petitioner has not been able to produce any material by which it can be ascertained that the form was tendered by the courier service to the Respondent No.2 for acceptance. Even Annexure P/5 on which it has been

written that 'refused to accept', does not bear the signature of the person who tendered the form and even the date is not mentioned on which it was tendered to the Respondent No.2. There is no affidavit of the person who tendered the form at the counter of the Respondent No.2.

8. A perusal of the writ petition reveals that there was clear cut negligence on the part of the Respondent No.3, who has preferred not to represent in the petition in spite of the fact that the notice was issued to him. As per the averments in the petition the form was handed over to the Respondent No.3 on 23.6.2003 at Akaltara. Akaltara and Raipur are connected by rail. It would not have taken two days time to reach the destination i.e. Raipur and even up to the day the petitioner enquired from the Respondent No.3 i.e. 28.7.2003 the Respondent No.3 had not even took trouble to return the form of the petitioner/applicant, so that he could have made alternative arrangement for delivery of the form at the counter of the Respondent No.2, as there was sufficient time available with the petitioner to submit his form till 7.7.2003 at the counter of the Respondent No.2. Therefore from the pleadings of the parties it stands established that the form was not tendered at the counter of the Respondent No.2 and for this negligence only the Respondent No.3 is responsible and for that the petitioner cannot blame the Respondent No.2 for non-inclusion of the name of the petitioner in the counseling list as the fault lies on the Respondent No.3. The Respondent No.3 accepted the form as a currier service, it was the duty of the Respondent No.3 to send it to Raipur at the earliest and he should have obtained the certificate from his Raipur office that the Respondent No.2 has refused to accept, and he should have

given the name of the person who tendered the envelope with time and date in order to enable the petitioner to take appropriate action in the matter.

9. In the result there is no merit in the petition and the same is liable to be dismissed. The petitioner is at liberty to take action against the Respondent No.3 for his negligence whatever remedy is available to him under the law.

10. Before parting with the order I would like to observe that for no fault of the petitioner, just on account of the lapse of the Respondent No.3 the career of the petitioner is at stake. He had chosen the courier service being a responsible and speedy mode of sending the form to the Respondent No.2 but to ill-fate of the petitioner that the Respondent No.3 has failed to discharge his duties. Even though the petitioner has no right to ask the respondent No.2 for counseling but looking to the facts and circumstances of the case and no fault on the part of the petitioner. I would like to observe further that after completion of counseling if any seat is left vacant and unfilled then it will be generosity on the part of the Respondent No.2 to allow the petitioner to appear in the counseling as a special case without making this case as a precedent and if he is found eligible and succeeds in the counseling then to give him admission on humanitarian ground so that his career is not spoiled. More particularly when the petitioner belongs to the Scheduled Caste Category, it is worth appreciation that he has obtained 68% marks. The petitioner is directed to approach the Respondent No.2 for this purpose within a period of seven days from today.

11. With the above observation this petition is disposed of finally.

**Sd/-**
**L.C. Bhadoo**
**Judge**

Thakur